# BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CETTOR

) In the metter of the Application of the Europition	12-10-07 04:59 PM
In the matter of the Application of the Exposition ) Metro Line Construction Authority for an order ) authorizing the construction of a two-track at-grade crossing for the Exposition Boulevard ) Corridor Light Rail Transit Line across Jefferson ) Boulevard, Adams Boulevard, and 23 <sup>rd</sup> Street, all three crossings located along Flower Street in ) the City of Los Angeles, County of Los Angeles ) California.	Application 06-12-005 (Filed December 6, 2006)
	Application 06-12-020 (Filed December 12, 2006)
) )	Application 07-01-004 (Filed January 2, 2007)
And Consolidated Proceedings.	Application 07-01-017 (Filed January 8, 2007)
And Consolidated Proceedings. )	Application 07-01-044 (Filed January 24, 2007)
) ) )	Application 07-02-007 (Filed February 7, 2007)
) )	Application 07-02-017 (Filed February 16, 2007)
) ) )	Application 07-03-004 (Filed March 5, 2007)
) ) )	Application 07-05-012 (Filed May 8, 2007)
) ) )	Application 07-05-013 (Filed May 8, 2007)

# NEIGHBORS FOR SMART RAIL'S COMMENTS CONCERNING THE HARVARD <u>TUNNEL</u>

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Pursuant to Section 6.4 ("Limited Further Comment") of the "Interim Opinion Authorizing The Exposition Metro Line Construction Authority("Expo") To Construct Thirty-Six New Crossings Along The Exposition Boulevard Corridor Light Rail Transit Line in Los Angeles County", Neighbors For Smart Rail ("NFSR") herein offers its "further comment" on the safety and sufficiency of the pedestrian tunnel at Harvard Boulevard(Application A.0612020)¹ Western Avenue Crossing (Application A0702007). As the Harvard Boulevard Pedestrian Access Tunnel is offered as the only mitigation for the students at Foshay Learning Center for the crossing hazards created and identified at the Western Avenue crossing, NFSR contends that the two crossings must be examined together and our comments reflect that position.

# I. EXPO ITSELF DISFAVORS THE USE OF OVERPASSES AND TUNNELS AS IT PROMOTES PEDESTRIAN USE OF UNREGULATED AT-GRADE CROSSINGS.

Expo probably said it best when evaluating the possibility of a "Pedestrian Undercrossing with Farmdale Open" (Alternative No. 5) in its very recent December 6, 2007 Memo to the Expo Board, entitled "Re-evaluation of Farmdale Grade Crossing Options."

"Because of the high probability that pedestrians would use the Farmdale roadway in lieu of the pedestrian undercrossing, thereby significantly compromising safety at the crossing along with the significant design and

<sup>&</sup>lt;sup>1</sup>These Comments are made pursuant to Rule 14.3 of the Rules of Practice and Procedure. In view of the fact that the Interim Opinion does not make any findings regarding the Harvard Tunnel, NFSR is unable to make any "recommendations" or "changes" thereto as required by Rule 14.3(b).

construction challenges, staff recommends against further study of this option. "

Although Expo disfavors comparisons between the Farmdale intersection at Dorsey High School and the Western Crossing, the latter serving some 3,400 K-12th grade school students (as well as parents, community members, and the public at large at the Foshay Learning Center), such comparisons are inevitable. The Western crossing, near Foshay Learning Center, is like the Farmdale crossing in that it serves an identified "special population" of school students who are at increased risk in an atgrade rail environment. Indeed, Foshay students are *prima facie* more at risk than those at Dorsey because they are younger, spanning from Kindergarten through High School, whereas Dorsey services only 9<sup>th</sup> through 12<sup>th</sup> graders. Younger children are less likely to understand and appreciate the dangers of fast moving trains.

Expo readily admits that Western/Exposition is "one of the busier crossings in the Street Running segment of Expo Rail" (p. 7, Response of Exposition Metro Line Construction Authority to Neighbors For Smart Rail's Motion for Reconsideration), making it that much more dangerous then Farmdale.<sup>2</sup> Furthermore, whereas the Farmdale crossing has been the subject of extensive and lengthy study resulting in at

<sup>&</sup>lt;sup>2</sup>Expo, in assessing overcrossings in its Response to Administrative Law Judge's Ruling Requesting Further Information (p. 3), filed October 9, 2007, likewise stated that "(P)edestrians do not use overcrossing where they have to walk up the ramp or stairs, cross the tracks and then walk back down the ramp or stairs. Rather, pedestrians walk to the closest at-grade crossing and cross the tracks there. Constructing a pedestrian overcrossing that students will not use will lead to students crossing the tracks illegally at the at-grade crossing..." For purposes of this brief, the only difference between an overcrossing and an undercrossing is that on the former one walk up the stairs and then down them, whereas in an undercrossing one walks down stairs and then up.

least some mitigation (e.g. quad gates, queuing areas, pedestrian gates, LED lights, and bells), the median-running crossing at Western Avenue is protected by no more than a couple of signs that illuminate right before a train speeds by. To an already impacted crossing which currently results in vehicles queuing across the tracks, are being added two trains, 2 bicycle lanes and an additional 1200 pedestrian/passengers. To mitigate the hazards inherent in this scenario Expo offers a single safety measure for the multitudes of children and students: the Harvard Pedestrian Tunnel, and none for the public at large. <sup>3</sup>

# II. AN EVIDENTIARY HEARING IS NECESSARY IN ORDER TO DETERMINE WHAT, IF ANY, SAFETY MITIGATION MEASURES EXPO PLANS FOR THE HARVARD TUNNEL

Expo's Response to NFSR's Motion for Reconsideration is a virtual advertisement for an evidentiary hearing. It refers to "investigations it has conducted...to collect data on the number of students crossing Exposition"; "videos and photos of the students traveling along Exposition Boulevard, queuing on the sidewalk at the two intersections and patterns of the crossings being documented." Expo also states that it has "retained a consultant to model and simulate the students and rail crossing at Exposition Boulevard." (P. 5, Response to Motion for Reconsideration). Based thereon, Expo asserts, in a wholly conclusionary fashion, that it has "found excellent compliance." (p. 4, Response to Motion for Reconsideration). The problem is that all of

<sup>&</sup>lt;sup>3</sup>Of course, only Foshay students are permitted to use the tunnel. It is not open to the parents, patients, adult school students or the thousands of others who will have to use the unregulated Western crossing.

this work was done after Expo filed its Application with the CPUC, after its Opening and Reply Briefs and even after its Response to the Administrative Law Judge's Ruling Requesting Further Information. Certainly, none of these studies are mentioned in any of those pleadings, and it would seem that no one but Expo has ever seen all of this after-the-fact documentation.

Apparently, even while it was vociferously arguing that the Harvard Tunnel was eminently safe in all of its filing with this administrative body, Expo itself had profound misgivings about the safety of the Western Crossing as mitigated by the Harvard Tunnel. Ignoring for the time being this inherent hypocrisy, not to mention the callous disregard for the safety of our children, such untested, and as yet unseen, studies, models, investigations and consultations must be held to the scrutiny of an evidentiary hearing. It is precisely the reason evidentiary hearings are conducted!

In its Response to NFSR's Motion for Reconsideration, Expo admits that it has not mitigated the safety hazards to Foshay students and faculty. On page 8 thereof it states that, per its own counts (which have yet to be examined <u>or even seen</u>) out of almost 1,300 students who cross the tracks in just a 20 minute period in the morning, and a 20 minute period in the afternoon, only about 400 of them use the tunnel. Expo fails to offer any solution to this under-use of the tunnel, other then to say that the Los Angeles School District "could encourage more students to use this tunnel."

But the uncontested fact is that the tunnel is <u>only open from 7:00 a.m. to 7:30</u>

<u>a.m. and 3:15 p.m. to 3:45 p.m., five days a week</u>, although there are a plethora of activities and services offered by Foshay throughout the mornings, evenings, and

weekends, when the tunnel is closed (see Section III below). In response, Expo cavalierly offers that "the hours of the tunnel's availability are not 'etched in stone', (but) to the contrary, school and city officials control the use of the tunnel and staffing hours for the monitors who assure its safe use." (pp. 8 & 9 Response to Motion for Reconsideration).

NFSR asks by what authority Expo or the CPUC rely on the staffing and increased monitoring time by the Los Angeles Unified School District? We would ask, in fact, how can the CPUC even rightfully evaluate a mitigation measure which proposes to encumber the budget and staffing of a Los Angeles City agency over which it has no authority? If Expo had any sort of a safety plan, in fact, let's be honest, if Expo cared at all about the safety of our children, it would have itself determined the hours the tunnel was accessible, not waited for NFSR to tell them in its Motion for Reconsideration. And, it would have consulted with Foshay staff to determine if it had the personnel, resources, budget and staff necessary to keep the tunnel open more than one hour a day, and only on weekdays.

Expo, when confronted with the inadequacy of the tunnel, is compelled to admit that:

"With the construction of Expo Rail, entailing closure of several nearby streets where they now cross Exposition Boulevard, construction of the Western Avenue Station, creation of at-grade crossings at Western and Denker, and erection of a fence along Exposition Boulevard, pedestrian traffic patterns-including the habits of students attending Foshay-will change to some extent." (p. 9 of Response to Motion for Reconsideration) (emphasis added).

Expo's solution:

"School or city officials are free to expand the hours of the day at which the Harvard Boulevard pedestrian tunnel will be open for use and during which monitors will be posted to ensure safety for those who use the tunnel. Expo Authority will do all it can to cooperate with and support school and city officials in reaching the optimal decision in that regard." (p. 9 of Response to Motion for Reconsideration).

In consideration of the fact that the Expo Authority won't be there once revenue service commences, NFSR takes little solace in their high-minded commitment. By law Expo dissolves at that time. Most importantly, even though it is clear that Expo recognizes the hazards it is creating, it has done virtually nothing to mitigate them.

Additionally, NFSR in its Motion for Reconsideration pointed out that, to its knowledge, no studies had been done to determine whether the Harvard Tunnel could structurally withstand the added weight of some 30 trains per hour,<sup>4</sup> each weighing almost 1.5 million pounds, passing over it on a daily basis, some 22 hours a day, 365 days a year. Expo, apparently considering this issue for the very first time in its Response to NFSR's Motion for Reconsideration, says it will construct a "supported" concrete slab beneath the tracks. It makes no mention whether it has done any engineering studies whatsoever to determine if a slab was found to be the best solution

<sup>&</sup>lt;sup>4</sup>Expo argues in its Response to NFSR's Motion for Reconsideration that the trains have 6 minute headways. But Expo's Preliminary Hazard Analysis states there are 5 minute headways, Expo's Response to RCES Protest of the Trade Tech Crossings states 4 minute peak headways. When Expo talks of speed they say 4 minutes headways, when they speak to safety they say 6 minute headways. NFSR used the median figure of 5 minute-headways.

and, if it was, whether concrete is the best material to utilize, what the recommended thickness and size of the slab should be, where it should be placed and so on. NFSR would feel more confident In the efficacy of the proposed cement mitigation if it were evaluated by RCES engineers or LADOT. As it is, we wonder if this "after-thought" solution has been devised by Expo's attorneys, in their desperate attempt to avoid an evidentiary hearing, or by their engineers. It occurs to NFSR that Expo should be requesting a hearing on this crossing themselves under the circumstances if, for no other reason, liability purposes.

## III. THE HARVARD TUNNEL IS NOT SUFFICIENT BECAUSE IT DOES NOT SERVE THE STUDENTS OR THE COMMUNITY THAT USES FOSHAY

Accessibility to the tunnel is woefully deficient, which is witnessed by the following undisputed facts:<sup>5</sup>

• The Harvard Tunnel is only available to students of Foshay. The public at large is not authorized to enter school property unless they are on specific school business. Expo has made no attempt to address pedestrian crossing safety for the nearly ½ mile expanse along Exposition from Denkar Avenue to Western Avenue that cannot be traversed because three existing interim crossings (Harvard Boulevard, LaSalle Avenue and Hobart Boulevard) will be closed and fenced off. Among the pedestrians newly at risk to the proposed train environment will be the at least 1200 additional pedestrians brought to the area by the split station

<sup>&</sup>lt;sup>5</sup>All of the facts recited herein are authenticated by the attached declaration of Colleen Mason Heller.

- platforms on either side of Western Avenue.
- Foshay holds California High School Exit Examination classes and student enrichment classes that service upward of 500 students every Saturday throughout the year. The tunnel is not open on Saturdays.
- Foshay is classified as a "Program Improvement Status 5 School" and therefore every Monday, Wednesday and Thursday holds enrichment classes attended by up to 250 students until 5:00 p.m.. The tunnel is closed when they leave school grounds.
- Foshay fields numerous athletic girls' and boys' teams (Freshman, Junior Varsity, etc.), including teams for volleyball, basketball, tennis, track & field and soccer, which all have after-school practices and games. All of this occurs after the tunnel closes at 3:30 p.m., often at night. Then there are of course the myriad of after-school clubs at Foshay that are attendant to any school: chess club, French club, cheer club, academic decathlon team practice, the list goes on and on. No tunnel.
- The Foshay Elementary School commences its classes at 7:45 a.m.
   Accordingly, when those students, many dropped off and therefore unattended, go to school, the tunnel is closed. As it is when they leave at 2:45 p.m.
- USC maintains an on-campus free health care clinic which is open all day, all year, where students and their families meet with health care professionals. At a separate Family Center operated by USC at Foshay families meet with social workers and are counseled on social services.

The parents who lack child care often take their youngsters with them.

Consequently, there can be as many as 4000 community residents and students on campus at any one time.

- Foshay is a "collector site", where <u>hundreds</u> of area students assemble at 6:30 a.m. (well before the tunnel is opened) to be bussed to schools at other locations.
- Foshay is a "Concept 6 School", operating year-round, often at times (summer, holidays) when there is no staff scheduled to open and supervise the tunnel.
- 33% of the student population at Foshay are "English Learners", who can at best be characterized as not proficient in the English language. When the Harvard Tunnel is not open or not used, those students, as well as other non-English speaking area residents, are at increased risk in an unmitigated crossing environment such as Western Avenue.
- Foshay has an unknown, but significant enough, disabled student population. Yet the tunnel is not ADA compliant. As an elevator has been proposed for either the over or under pedestrian crossings at Farmdale, presumably built at Expo's expense, will Expo be making the same commitment to the Foshay community? For those disabled community

<sup>&</sup>lt;sup>6</sup> Showing disdain, rather then any compassion, for the disabled's (even disabled children's) inability to use the tunnel, Expo responds that "because Expo is not planning to modify the tunnel, ADA requirements do not presently apply." (p. 9 of Response to Motion for Reconsideration)

members who lack tunnel access, what is the risk to disabled wheel chair users crossing the train tracks? LADOT has already questioned bicycle tire safety crossing the tracks. In addition to access ramps proposed for Western Avenue and Exposition Blvd. are there LED train warning signs at disabled persons' eye level?

In light of Expo's presumed engineering expertise, its disregard for young students, the disabled, and the community cannot be chalked up to mere incompetence. Expo's attitude towards the safety of the children who use the Harvard Tunnel can only be characterized as one of callous indifference.

#### IV. THE LAW SUPPORTS AN ORDER FOR AN EVIDENTIARY HEARING

By now, the mandate of *City of San Meteo* is well known to this body: "Today in this State a proponent who desires to construct a new at-grade crossing over mainline railroad trackage carrying any number of appreciable volume of passenger traffic has a very heavy burden to carry. Against the aforestated formidable backdrop of fundamental statutory and professional opprobrium, he must convincingly show both that a separation is impracticable and that the public convenience and necessity absolutely require a crossing at grade." *City of San Mateo, SoPac Transp. Co.* (1982) 8 CPUC 2d 572, 573 (emphasis added).

"Practicable means being possible physically of performance, a capability of being used, a feasibility of construction.." (Webster's New Dictionary p. 625). The law cited in *City of San Mateo* is hardly new, as early as a half century ago the court in *Kern* 

County Bd. Of Supervisors, 51 CPUC 317, stated that "grade crossings should be avoided wherever it is possible to do so.

Granted, the Harvard Tunnel is not a at-grade crossing, it crosses underground. But as it is presently proposed to be utilized it forces the students of Foshay (and all others) to use the at-grade crossing at Western and Exposition. NFSR maintains that the Harvard Pedestrian Tunnel cannot be relied upon as a mitigation for the Western Avenue Crossing unless the Western Avenue Crossing and the tunnel are examined in tandem.

Tested against the criteria enumerated in *City of San Mateo, supra,* Expo falls far short of compliance with practicability standards:

- 1. A convincing showing of safety by applicant. Quite to the contrary,

  Expo has demonstrated that the Harvard Tunnel is not safe, either as an alternative for students of Foshay to the unregulated Western crossing, or structurally.
- 2. The concurrence of the local community authorities. Los Angeles

  Unified School District's letter of October 11, 2007 to Judge Koss makes

  clear that Expo does not have LAUSD's concurrence. Indeed, there is no

  indication that the school itself or the LAUSD has even been consulted

  with respect to the tunnel. As shown above, Expo's Response is replete

  with expectations that after the rail line is constructed "school or city

  officials are free to expand the hours of the day at which the Harvard

  Boulevard pedestrian tunnel will be open", that "the hours of the tunnel's

availability are not 'etched in stone'" and that "school and city officials control the use of the tunnel and staffing hours for the monitors who assure its safe use." There is no concurrence because there was no consultation.

- 3. The concurrence of local emergency authorities. Again, who knows?

  Expo mentions nary a word about any local emergency authorities that may have to get to the community, or worse yet, to the school, in the event of a tragedy.
- 4. **The opinions of the general public**, and specifically those who may be affected by the at-grade crossing and the street closures. *Again, NFSR maintains that there was no attempt to solicit any such opinions from the community or, sadly, even from the staff at Foshay.*<sup>7</sup>

#### V. CONCLUSION

\_\_\_\_At the very least, an evidentiary hearing is mandated. What Expo offers to the CPUC and the public is a "Red Herring" approach to mitigation wherein they define a select set of hazards that can be mitigated within their budget but never seem to get to the next level of analysis that addresses safety hazards identified by other agencies and the public unless forced to do so. When confronted with additional risks Expo offers a hope and a prayer, "backed" by vague promises of assistance after construction is complete (which cannot be fulfilled because Expo will be dissolved).

<sup>&</sup>lt;sup>7</sup>NFSR do not believe that Factors 5 and 6 of the practicability test are applicable.

Using the Harvard Boulevard Tunnel to mitigate the risks presented by the trains, station platforms, bicycle lanes and increased traffic cut through due to street closures, at the Western Avenue crossing needs further examination. Expo's promises and good intentions are no substitute for a comprehensive, carefully engineered and fully implemented safety mitigation plan for Western Avenue and the Harvard Boulevard Pedestrian Access Tunnel. Expo needs to formulate such a plan, in concurrence with CPUC Staff, LADOT, and LAUSD between now and the evidentiary hearing, which will probably take place in late January or February, after the Expo Board has heard from its staff and decided what further mitigation it will employ at the Farmdale crossing. At that time Expo can present a plan for the Western Avenue Crossing and the Harvard Boulevard Pedestrian Access Tunnel that can be properly scrutinized to ensure the health and safety of the Foshay children and the South Los Angeles community at large, and to preserve the integrity of the CPUC in its duty to the citizens of Los Angeles.

Respectfully submitted,

/S/ COLLEEN MASON HELLER

Colleen Mason Heller Vice President, Neighbors For Smart Rail **Declaration of Colleen Mason Heller** 

I, Colleen Mason Heller, declare as follows:

1) I am the Vice President of Neighbors For Smart Rail. I am over the age of eighteen

and am competent and have personal knowledge of the facts recited herein. I am available to

personally testify thereto.

2) The facts recited in this Motion respecting Foshay Learning Center (Foshay) were all

personally communicated to me by Dr. Rob Nelli a faculty member at Foshay and confirmed by

Vice Principal Dimone Watson, and Principal Veronique Wills.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of December, 2007 at Los Angeles, California

/S/ COLLEEN MASON HELLER

Colleen Mason Heller

Vice President, NFSR

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#### CERTIFICATE OF SERVICE

I, Colleen Mason Heller, hereby certify that on this date I will serve the foregoing

#### "NEIGHBORS FOR SMART RAIL'S COMMENTS CONCERNING THE HARVARD TUNNEL"

regarding Application A.06-12-005 et al., by electronic mail, sending the entire document as an attachment to an e-mail message, hand delivery, or U.S. mail, first class, postage prepaid to all known parties of record to this proceeding on the service list:

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#### By hand delivery:

HON. KENNETH L. KOSS Administrative Law Judge California Public Utilities Commission 505 Van Ness Avenue, 5th Floor San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of December, 2007 at Los Angeles, California...

#### /s/ COLLEEN MASON HELLER

Colleen Mason Heller

### CALIFORNIA PUBLIC UTILITIES COMMISSION SERVICE LISTS

Proceeding: A0612005 and Consolidated Proceedings- EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

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